

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 2011-784

**DONNA E. WERNER, AKA
Donna Eldora Werner
13134 Pinyon Drive
Clermont, FL 34711
Registered Nurse License No. 549891**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

RESPONDENT

FINDINGS OF FACT

1. On or about March 18, 2011, Complainant Louise R. Bailey, M.Ed.,RN, in her official capacity as the Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs, filed Accusation No. 2011-784 against Donna E. Werner, aka Donna Eldora Werner (Respondent) before the Board of Registered Nursing. (Accusation attached as Exhibit A.)

2. On or about November 17, 1998, the Board of Registered Nursing (Board) issued Registered Nurse License No. 549891 to Respondent. The Registered Nurse License expired on June 30, 2010, and has not been renewed.

3. On or about March 18, 2011, the Respondent was served by Certified and First Class Mail copies of the Accusation No. 2011-784, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record which, pursuant to Business and Professions Code section 136 and Title 16 California Code of Regulations section 1409.1, is required to be reported and maintained with the Board, which was and is:

13134 Pinyon Drive
Clermont, FL 34711

4. Service of the Accusation was effective as a matter of law under the provisions of

1 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
2 124.

3 5. On or about April 1, 2011, the Certified Mail was returned to our office marked "Not
4 Deliverable as Addressed-Unable to Forward". On or about April 1, 2011, the First Class Mail
5 was returned to our office marked "Attempted-Not Known".

6 6. Respondent failed to maintain an updated address with the Board and the Board has
7 made attempts to serve the Respondent at the address on file. Respondent has not made herself
8 available for service, and therefore, has not availed herself of her right to file and notice of
9 defense and appear at a hearing.

10 7. Business and Professions Code section 2764 states:

11 The lapsing or suspension of a license by operation of law or by order or decision of
12 the board or a court of law, or the voluntary surrender of a license by a licensee shall not deprive
13 the board of jurisdiction to proceed with an investigation of or action or disciplinary proceeding
14 against such license, or to render a decision suspending or revoking such license.

15 8. Government Code section 11506 states, in pertinent part:

16 (c) The respondent shall be entitled to a hearing on the merits if the respondent files a
17 notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation
18 not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's
19 right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

20 9. Respondent failed to file a Notice of Defense within 15 days after service upon her of
21 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 2011-
22 784.

23 10. California Government Code section 11520 states, in pertinent part:

24 (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the
25 agency may take action based upon the respondent's express admissions or upon other evidence
26 and affidavits may be used as evidence without any notice to respondent.

27 11. Pursuant to its authority under Government Code section 11520, the Board after
28 having reviewed the proof of service dated, March 18, 2011, finds Respondent is in default. The

1 Board will take action without further hearing and, based on Accusation No. 2011-784 and the
2 documents contained in the Default Decision Investigatory Evidence Packet which includes:
3 Exhibit 1 – Pleadings offered for jurisdictional purposes; Exhibit 2 – License History
4 Certification for Donna E. Werner, aka Donna Eldora Werner, Registered Nurse License No.
5 549891; Exhibit 3 – State of Florida Board of Nursing, Department of Health, Petitioner, vs.
6 Donna Eldora Werner, Respondent, Case No. 2005-52068, License No. RN 3326602 – Final
7 Order; Exhibit 4 - State of Florida Board of Nursing, Department of Health, Petitioner, v. Donna
8 Eldora Werner, R.N., Respondent, Case No. 2005-52068 – Corrected Administrative Complaint;
9 Exhibit 5 - State of Washington Department of Health, Nursing Care Quality Assurance
10 commission, In the Matter of Donna E. Werner, Credential No. RN00093054, Respondent,
11 Master Case No. M2002-60307 – Order on Request for Termination of Commission Order;
12 Exhibit 6 - State of Washington Department of Health, Nursing Care Quality Assurance
13 commission, In the Matter of the License to Practice as a Registered Nurse of Donna E. Werner,
14 RN, Credential No. RN00093054, Docket No. 02-04-A-1059RN – Findings of Fact, Conclusions
15 of Law and Final Order of Default (Failure to Respond); Exhibit 7 - State of Washington
16 Department of Health, Nursing Care Quality Assurance commission, In the Matter of the License
17 to Practice as a Registered Nurse of Donna E. Werner, RN, Credential No. RN00093054,
18 Respondent, Docket No. 02-04-A-1059RN – Statement of Charges; Exhibit 8 - State of
19 Washington Department of Health, Nursing Care Quality Assurance commission, In the Matter of
20 the License to Practice Registered Nursing of Donna E. Werner, RN, License No. RN00093054,
21 Respondent, Docket No. 99-05-A-1004RN – Stipulated Findings of Fact Conclusions of Law and
22 Agreed Order; Exhibit 9 - State of Washington Department of Health, Nursing Care Quality
23 Assurance Commission, In the Matter of the License to Practice Registered Nursing of Donna E.
24 Werner, RN, License No. RN00093054, Respondent, Docket No. 99-05-A-1004RN – Statement
25 of Charges; Exhibit 10 – Affidavit of Shannon Silberling; Exhibit 11 – Declaration of costs by
26 Office of the Attorney General for Prosecution of Case No. 2011-784, and finds that the charges
27 and allegations in Accusation No. 2011-784 are separately and severally true and correct by clear
28 and convincing evidence.

1 12. Taking official notice of the Declaration of costs by the Office of the Attorney
2 General contained in the Default Decision Investigatory Evidence Packet, pursuant to Business
3 and Professions Code section 125.3, it is hereby determined that the reasonable costs for
4 Investigation and Enforcement in connection with the Accusation are \$1,340.00, as of April 4,
5 2011.

6 DETERMINATION OF ISSUES

7 1. Based on the foregoing findings of fact, Respondent Donna E. Werner, aka Donna
8 Eldora Werner has subjected her following licenses to discipline:

9 a. Registered Nurse License No. 549891

10 2. The agency has jurisdiction to adjudicate this case by default.

11 3. The Board of Registered Nursing is authorized to revoke Respondent's Registered
12 Nurse License based upon the following violations alleged in the Accusation, which are
13 supported by the evidence contained in the Default Decision Investigatory Evidence Packet in this
14 case.

15 a. Violation of Business and Professions Code section 2761(a)(4) - Disciplinary
16 action by another State Board of Nursing.

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

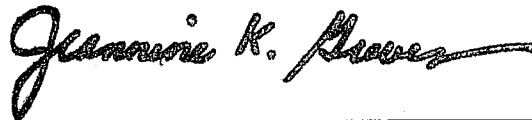
ORDER

IT IS SO ORDERED that Registered Nurse License No. 549891, heretofore issued to Respondent Donna E. Werner, aka Donna Eldora Werner, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on July 6, 2011.

It is so ORDERED June 6, 2011



FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS

Attachment:

Exhibit A: Accusation No. 2011-784

Exhibit A

Accusation No. 2011-784

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 SHANA A. BAGLEY
Deputy Attorney General
4 State Bar No. 169423
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 622-2129
Facsimile: (510) 622-2270
7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. *2011-784*

13 **DONNA E. WERNER, a.k.a. DONNA**
14 **ELDORA WERNER**
13134 Pinyon Drive
Clermont, FL 34711

A C C U S A T I O N

15 **Registered Nurse License No. 549891**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs.

23 2. On or about November 17, 1998, the Board of Registered Nursing issued Registered
24 Nurse License Number 549891 to Donna E. Werner, also known as Donna Eldora Werner,
25 (Respondent). The Registered Nurse License expired on June 30, 2010, and has not been
26 renewed.

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 118, subdivision (b), of the Business and Professions Code (Code) provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

6. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b), of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISION

7. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct . . .

...

(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license or certificate by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action.

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COST RECOVERY

8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Washington Out of State Discipline) (Bus. & Prof. Code §2761(a)(4))

9. Respondent has subjected her Registered Nurse License to disciplinary action under Code section 2761, subdivision (a)(4), in that on or about November 18, 1999, September 3, 2002, and June 4, 2009, the State of Washington Department of Health Nursing Care Quality Assurance Commission (Washington Commission) entered orders disciplining Respondent's nursing license.

10. On or about November 18, 1999, the Washington Commission entered a Stipulated Findings of Fact, Conclusions of Law, and Agreed Order in a disciplinary matter entitled *In the Matter of the License to Practice Registered Nursing of Donna E. Werner, RN*, Case Number 99-05-A-1004RN. The Agreed Order was supported by the Stipulated Findings of Fact signed by the Respondent. The Agreed Order stated that based upon a finding of unprofessional conduct, Respondent's registered nurse license would be suspended for 12 months, with the suspension stayed. Respondent was further ordered to complete eight hours of theoretical instruction in fetal monitoring, 8 hours of theoretical instruction in high-risk pregnancy intra partum care, and 250 hours of supervised clinical practice with quarterly reports. That Agreed Order is now final and is incorporated by reference as if fully set forth.

11. The Washington Commission 1999 Agreed Order was based on Respondent's actions in or around August 1998, when Respondent was working as a registered nurse at the Swedish Medical Center in Seattle, Washington. She failed to intervene appropriately when a high-risk ante partum patient showed signs and symptoms of serious pregnancy complications. The Respondent removed the fetal monitor, failed to notify a physician, charge nurse, or other

1 colleagues of non-reassuring fetal patterns and bleeding, and failed to chart the patient's of non-
2 reassuring fetal patterns and bleeding. During Respondent's shift, the patient's baby died intra
3 uterus.

4 12. On or about September 3, 2002, the Washington Commission entered a Findings of
5 Fact, Conclusions of Law, and Final Order (Failure to Respond) in a disciplinary matter entitled
6 *In the Matter of the License to Practice Registered Nursing of Donna E. Werner, RN*, Case
7 Number 02-04-A-1059RN. Based upon a finding of unprofessional conduct and Respondent's
8 failure to respond and Respondent's failure to comply with the terms of the 1999 Agreed Order,
9 the Final Order indefinitely suspended Respondent's registered nurse license. Respondent was
10 permitted to apply for a modification of the Final Order upon proof of completion of the terms of
11 the 1999 Agreed Order. That Final Order is now final and is incorporated by reference as if fully
12 set forth.

13 13. On or about August 31, 2009, the Washington Commission entered an Order of
14 probation for Respondent's registered nurse license in a disciplinary action entitled *In the Matter*
15 *of Donna E. Werner*, Credential No. RN00093054. The Order was based upon findings of
16 unprofessional conduct, Respondent's failure to comply with the terms of the 1999 Agreed Order
17 and 2002 Final Order, Respondent's practice of registered nursing in the State of Florida,
18 Respondent's subsequent discipline by the State of Florida Board of Nursing, as explained in
19 more detail in Paragraph 14, below, and Respondent's intent to return to nursing after ceasing
20 practice in 2005. The Washington Commission's order stated that: Respondent's license was
21 reinstated and immediately subject to probation. She was prohibited from resuming practice as a
22 registered nurse until she successfully completed the following: a Commission-approved
23 refresher course, 8 hours of theoretical instruction in fetal monitoring, 8 hours of theoretical
24 instruction high-risk pregnancy intra partum care, and at least 250 hours of supervised clinical
25 practice as a registered nurse in intra partum care with quarterly reports. She was also ordered to
26 comply with other terms and conditions. That Order is now final and is incorporated by reference
27 as if fully set forth.

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SECOND CAUSE FOR DISCIPLINE

**(Unprofessional Conduct – Florida Out of State Discipline)
(Bus. & Prof. Code §2761(a)(4))**

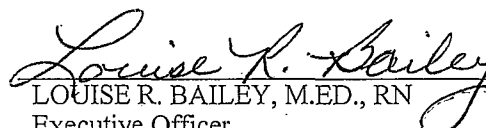
14. Respondent has subjected her Registered Nurse License to disciplinary action under Code section 2761, subdivision (a)(4), in that on or about February 16, 2006, the State of Florida Board of Nursing (Florida Board) entered a Final Order mandating that Respondent's registered nurse license be suspended in a prior disciplinary action entitled *In the Department of Health v. Donna Eldora Werner*, Case No. 2005-52068. The Decision was based upon Respondent's out of state discipline in Washington as ordered by the Washington Commission on September 3, 2002, and as explained in more detail in Paragraph 12, above. Specifically, Respondent signed a Stipulation agreeing to an order to suspend her license until she demonstrated the ability to engage in the safe practice of nursing, completed a psychological evaluation, paid an administrative fine, and complied with other terms and conditions. The February 16, 2006 Final Order is now final and is incorporated by reference as if fully set forth.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 549891, issued to Donna E. Werner, also known as Donna Eldora Werner;
2. Ordering Donna E. Werner, also known as Donna Eldora Werner, to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: March 18, 2011


LOUISE R. BAILEY, M.Ed., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant